No. 47557-0-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of

Gregory Lackey, Appellant,

and

Carolynn Lackey, Respondent.

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

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I. Introduction

This is a case in which the trial court set interest at 12% on a property-equalizing monetary judgment in a marital dissolution case. The trial court opined that clarification of the appellate standards for its exercise of discretion in setting an interest rate would be welcomed. The appellate cases known to the undersigned were initially from the Supreme Court, but that court has not rendered a decision in the area since 1964. The Court of Appeals took up the issue in 1993 and then most recently in 2002, and it appears the few Court of Appeals cases have overlooked key precedents from the Supreme Court respecting the matter. The sole

question in the appeal is what the standards for exercise of discretion should be, and whether those standards were applied by the entirely well-intentioned trial court, which grappled as best it could with standards in the absence of clear delineation by the appellate courts.

II. Assignments of Error

1. The trial court erred in entering its Decree of Legal Separation to the extent of decreeing interest at 12% on the property equalization judgment awarded to the respondent as opposed to some significantly lower rate of interest. (CP 67 - 69.)

2. The trial court erred in making its finding 2.8(1) (at CP 60) that interest should accrue at the rate of 12% per year, as opposed to some significantly lower rate of interest, on the property equalization judgment awarded to the respondent. (CP 60.)

3. The trial court erred in entering its Order on Motion for Reconsideration to the extent of denying the appellant's Motion for Reconsideration for some significantly lower rate of interest by retaining interest at 12% on the property equalization judgment awarded to the respondent. (CP 118.)

Issues Pertaining to Assignments of Error

1. Issues Pertaining to Assignment of Error No. 1

a. Whether the form of the obligation for payment of money in this case is one in which the court is or is not required to default to the imposition of an interest rate of 12% on the property equalization judgment unless it finds a sound reason to justify some lower rate of interest.

b. Separately, whether the court's setting interest at the rate of 12% per year on the property equalization judgment awarded to the respondent constituted an abuse of discretion under applicable abuse of discretion standards.

2. Issues Pertaining to Assignment of Error No. 2

Same as those which apply to Assignment of Error No. 1.

3. Issues Pertaining to Assignment of Error No. 3

Same as those which apply to Assignment of Error No. 1.

III. Statement of the Case

Petitioner-appellant Gregory Lackey and respondent-respondent Carolynn Lackey were granted a legal separation in this Clark County action on January 30, 2015. (CP 67.) In the decree, Dr. Ms. Lackey's surname was returned to her maiden name, Pavlock. (CP 72.) (In the remainder of this brief, the husband will be referred to as "Dr. Mr. Lackey" or "Dr. Mr." and the wife as "Dr. Ms. Pavlock" or "Dr. Ms."

Both are doctors by virtue of Washington licensure as clinical chiropractors.) When the parties separated on December 10, 2010, they had been married 12-1/2 years. (CP. 59.) At the time of entry of the Decree of Legal Separation, Dr. Mr. was 51 and Dr. Ms. 47, and their two children, Paige and Bradley, were 16 and 12. (CP 1, 74.) Almost entirely by agreement, the residential care of the children was divided between the parties approximately 55% to Dr. Ms. and 45% to Dr. Mr. (CP 75 - 77.) Both parties were engaged in separate clinical chiropractic practices in Clark County at the time of entry of the decree. (CP 36, 41.) Dr. Mr. Lackey's practice was one in which he had been engaged since 1998, and Dr. Ms. Pavlock's was one which she opened in approximately 2013 - 2014, after having previously practiced clinical chiropractic in other settings off and on throughout the marriage. (CP 36, 44.)

The court found Dr. Mr.'s monthly net income to be $10,800 and Dr. Ms.' to be $3,500 imputed. (CP 92.) The court stated in its oral decision:

> Based on all the evidence that I've heard here and just getting to know Ms. Lackey . . . , I am fully confident she'll be making $3500 a month.

(RP 880.)

Child support payable by Dr. Mr. to Dr. Ms. was ordered at $2,078, from which it may readily be calculated that after the child support

transfer, Dr. Mr. Lackey was left with $8,722 per month to live on and Dr. Ms. Pavlock $5,578. (CP 84, 92.) However, when the further factor is added of a $1,000 per month property distribution payment ordered payable from Dr. Mr. to Dr. Ms., the parties' respective monthly funds availability became $7,722 to Dr. Mr. and $6,578 to Dr. Ms. Also, the court stated in announcing its decision that it expected the income from Dr. Ms.' newly opened clinical chiropractic practice would increase and that it had full confidence in her ability to generate a greater income nearer Dr. Mr.'s in the future:

> I have no doubts whatsoever that she won't be one successful business person in the community for years and years to come. I don't doubt you for one minute.

(RP 876.)

I think you'll be very successful. I'm not worried about you at all.

(RP 889.)

In her financial declaration submitted prior to trial, Dr. Ms. Pavlock claimed all her monthly living expenses and debt payments to total $4,876, so the $5,578 the court made available to her as the sum of child support and her "found" monthly net income exceeded her claimed need for funds by fully $702 per month. (CP 18.) Dr. Ms. Pavlock had received to the time of trial $3,750 per month in temporary child support and maintenance following separation just over four years earlier on

December 10, 2010 (and somewhat higher than $3,750 per month before April, 2012), so when the Decree of Legal Separation was entered on January 30, 2015, the court denied Dr. Ms. Pavlock's request for further maintenance at the conclusion of this 12-1/2-year marriage. (CP 71.) The court of course had the additional justification for the denial of further maintenance that her "found" monthly net income and the child support ordered exceeded her claimed need for funds for the children's and her support by the previously stated margin of $702 per month (and by $1,702 when the $1,000 per month property equalization payment is also taken into account.) (CP 18, 84.) Dr. Ms. has not appealed the court's denial of maintenance beyond the date of entry of the Decree of Legal Separation.

The parties owned no real property at the time of entry of the decree and the court found, without assigning values thereto, that the values of their community-owned tangible personal property items (furniture, automobiles) was substantially the same. (CP 60.)

The court found but one other community asset to exist at the time of entry of the decree: The chiropractic practice operated by Dr. Mr., which it valued at $233,582. The court determined that an equalizing judgment (which it denominated a "judicial marital lien") should be entered against Dr. Mr. in favor of Dr. Ms. in the amount of half that value, less $5,000 the court previously ordered and which was paid to Dr.

Ms. by Dr. Mr. during the course of the trial. (CP 59, 60, 67, 69.) This equalizing judgment was set at the principal amount of $114,291, with interest at the rate of 12% per year, with a first payment of $10,000 due two days after entry of the decree and the balance payable at a minimum of $1,000 per month. (CP 69.) The decree additionally granted Dr. Ms. a security interest in Dr. Mr.'s business as follows:

> The judgment . . . shall be secured by an appropriate UCC security instrument to be executed and filed subsequent to the entry of the decree of Legal Separation encumbering the interest in Lackey Chiropractic, PLLC.

(CP 69.) The court thus made the $114,291 secured obligation non-bankruptable and gave Dr. Ms. a UCC security interest in Dr. Mr.'s chiropractic practice to ensure further that the financial obligation could not be avoided. The court stated, "Those are nondischargeable in bankruptcy . . . ." (RP 877.) (See 11 U.S.C. Sec. 523(a)(5), (15), exempting domestic support and other obligations between ex-spouses created in a decree of divorce from discharge in bankruptcy.)

In announcing its decision, the court expressly stated its intent was to divide the interest in the business, functionally the parties' only community asset, exactly equally:

> So, the business is valued at 198,892, plus the $30,000 [for accounts receivable]. What that means is I'm awarding half that business value to the wife. So she will have a judgment against the husband for $114,291.

(RP 877.)

> *My intention here is to treat you both equally on the assets and the debts and try to balance it.*

(Italics added. RP 879.)

However, interest at the ordered 12% rate on the $104,291 balance after the $10,000 initial immediate payment was thus $1,043 per month, or $43 in excess of the monthly minimum payment ordered. It is that 12% interest rate which is the sole issue in this appeal.

The only other thing the court distributed between the parties was their debts, which it divided almost exactly equally: The court ordered Dr. Mr. to assume a $17,000 community obligation and Dr. Ms. to assume community debts it found to have an aggregate balance of $14,000. (CP 60, 61.) The court ordered the parties each to pay one-half of the balance owed for federal and state income taxes during the 12-1/2-years of the marriage and determined it was unable to make a finding as to the amount and added a finding that collectability of the taxes was "speculative" due to the period of time the taxes were in default and the uncertainty as to how the tax obligations could be enforced. (CP 61.) The amount of the taxes, however, was very substantial: Approximately $199,873 by Dr. Mr.'s reckoning; Dr. Ms. did not materially disagree with that amount. (CP 39, 44-54.) The court ordered that either party's payment of $2

towards the community tax obligations would effect a $1 change (downwards, of course, if by Dr. Mr. and upwards, if by Dr. Ms.) in the $104,291 balance owed on the judicial marital lien after the $10,000 initial payment due two days after entry of the decree.

Dr. Mr. served and filed a timely motion and memorandum of authorities for reconsideration addressed to the 12% interest rate. (CP 97 – 105.) The motion was argued on March 6, 2015, orally decided adversely to Dr. Mr. that date, and adjudicated in writing in an order entered on April 10, 2015. (RP of March 6, 2015 4 – 28. CP 117 – 119.) Dr. Mr. thereupon filed timely notice of appeal to the Court of Appeals on May 7, 2015. (CP 129 – 140.)

The hearing addressing the interest rate question before this court is set forth in 24 pages of the trial court record at RP of March 6, 2015 4 – 28.

The trial court appears to have acknowledged that the factors involved in setting interest rates on compensating lien judgments in marital dissolution property cases might profit from clarification from the appellate level:

> [I]f we get some case law from the Court of Appeals on this issue, great. I don't reject that kind of help at any time.

(RP of March 6, 2015 27.)

I think we're making a great record for the Court of Appeals. (RP of March 6, 2015 22.)

During the course of argument on the motion for reconsideration, the court alluded to several different considerations which it either strongly implied or expressly stated might have a bearing on setting an appropriate interest rate in this case:

1. That Dr. Mr.'s credit worthiness was poor enough that he was only able to borrow money at an interest rate of 29%. (RP of March 6, 2015 10.) That *his own* interest rate in the open market was 29%, or at least somewhere above 20%. (RP of March 6, 2015 10.)

2. That Dr. Mr. was a potential default risk for paying the equalizing judgment amount. (RP of March 6, 2015 10, 12, 21.)

3. That the value of the business of which Dr. Ms. was awarded half through an order for payment of money might increase. (RP of March 6, 2015 11.)

4. That although interest rates are presently at historic lows, they could increase or even conceivably return to double-digit levels in the future. (RP of March 6, 2015 13.)

5. That if Dr. Ms. were somehow able to have immediately the $114,291 constituting her half of the value of Dr. Mr.'s business, or at least some significant part of it, the value to her might equal or exceed the 12% interest rate Dr. Mr. was ordered to pay. (RP of March 6, 2015 15, 20, 26.)

6. That while the market rate of interest on 30-year mortgages are at historic lows, the rate applicable to a new or used car loan is higher. (RP of March 6, 2015 18.)

The court stated in denying the motion to reconsider the 12% interest rate that each of the reasons discussed during the course of the argument was a reason it relied on in retaining the 12% interest rate. (RP of March 6, 2015 27.) The court stated, "For all the reasons we've talked about, it makes perfect sense to set it at 12 percent." (RP of March 6, 2015 27.)

IV. Summary of Argument

Courts take judicial notice, both at the trial and appellate court levels, of prevailing interest rates in the economy. The only judgment interest rate a court has power to set at a rate different from the statutory rate is one for property equalization or attorney's fees in a marital dissolution case. Clear precedent from the Supreme Court is to the effect that no requirement exists whatsoever to set judgment rate interest, or any interest, on a property-equalizing monetary obligation in divorce provided

there is security for the obligation, as there was in this case. Interest at the 12% judgment interest rate should not be the presumptive level of interest in this case. Even if 12% interest were to be the presumptive interest level in this case, the trial court, in grappling with how to exercise discretion, identified factors utilized in its exercise of discretion which case law holds may not be utilized or which this court should now clarify to be inappropriate.

Finally, doubling the judgment interest rate from six percent to 12 between 1969 and 1982, followed by market rate interest declines to historic lows for a substantial period of time recently, has made a hash of the rationale for a presumption of judgment rate interest on property-equalization payments in divorce.

V. Argument

a. Judicial Notice of Change in Purchasing Power of Money and in Relevant Interest Rates.

This appeal involves, and indeed is limited to, the objection of Dr. Mr. Lackey to the court's setting an interest rate of 12% on the supposedly "equalizing" judgment it established to award to Dr. Ms. Pavlock a sum of money equal to half the value of the chiropractic practice of Dr. Mr. Lackey. Dr. Mr. contends that the rate of interest is unreasonable, defeats the court's announced intention of dividing the parties' property equally,

and is so out of conformance with prevailing interest rates elsewhere in the economy as to constitute an abuse of discretion. Dr. Mr. further contends that the particular form of the obligation decreed in this case, involving both bankruptcy non-dischargeability and a UCC security interest, do not mandate a presumption default to 12% judgment rate interest absent a showing by Dr. Mr. that some lower rate is justified.

Interest rates and changes in the purchasing power of the dollar are proved in Washington through judicial notice. Washington's Evidence Rule 201 does a commendable job succinctly summarizing the common law of judicial notice as follows:

> **(b) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> **(c) When Discretionary.** A court may take judicial notice, whether requested or not.
>
> **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.
>
> . . .
>
> **(f) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

One type of judicial notice is of things which are a matter of common knowledge: The sun rises in the east. The Mariners usually do

not field a winning team. Traffic at commute time in Seattle is usually awful. (ER 201(b)(1) data which is generally known to everyone in the jurisdiction.) But the other branch of judicial notice is quite different: Data which may or may not be well-known but whose accuracy is readily determinable or verifiable by reference to "sources whose accuracy cannot reasonably be questioned." ER 201(b)(2). The market price of wheat may be reasonably well known in some counties of the state but not in others, but everywhere in the state there are reliable compilations of that data which may be readily accessed by anyone, so under ER 201(b)(2) the value of wheat in the state is a matter of which a court may take judicial notice whether the court is in an agricultural area or not. *Rogstad v. Rogstad*, 74 Wn.2d 736, 742, 446 P.2d 340 (1968). The *Rogstad* court stated that the courts' power to avoid unnecessary proof of established facts is "very broad" because proving a thing by judicial notice which is confirmed in readily accessible reliable sources reduces trial time and thereby avoids unnecessary burdening of judicial resources. *Rogstad v. Rogstad, supra*, 74 Wn.2d 736, 742, 446 P.2d 340 (1968).

Judicial notice is not limited to what an individual judge knows. 29 Am.Jur.2d *Evidence* Secs. 24, 35 (2008). Whereas anything reasonably said to be within "common knowledge" would ordinarily be known to essentially all judges (ER 201(b)(1)), a great deal of what may be

established by judicial notice through "sources whose accuracy cannot reasonably be questioned" may not be known to very many judges before those sources are identified and their reliability and content shown to the court. ER 201(b)(2). The court may conclude a thing to be established by judicial notice if the participant in the proceeding who found it was the court itself. 29 Am.Jur.2d *Evidence* Secs. 35, 36 (2008). A fact which is susceptible of establishment on judicial notice may be treated as a fact for the first time on appeal. 29 Am.Jur.2d *Evidence* Sec. 46 (2008); during "any stage of the proceeding." ER 201(f).

The Supreme Court described over 50 years ago that

> Judicial notice, . . . is composed of facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and verifiable certainty.

State ex rel. *Humiston v. Meyers*, 61 Wn.2d 772, 779, 380 P.2d 735 (1963) (quoting with approval a Wisconsin case, *Ritholz v. Johnson*, 244 Wis. 494, 502, 12 N.W. 2d 738, 741 (1944), to the effect that the sources may include "encyclopedias, authoritative works upon the subject, report of committees, scientific bodies, and any source of information that is generally considered accurate and reliable . . . .").

Washington trial and appellate courts both take judicial notice of "the change in the purchasing power of a dollar, *Keller v. Porter*, 29

Wn.2d 650, [666], 189 P.2d 233 (1948); *Thompson v. Seattle*, 35 Wn.2d 124, [127], 211 P.2d 500 (1949)." *Rogstad v. Rogstad*, 74 Wn.2d 736, 742, 446 P.2d 340 (1968). Judicial notice, including especially at the appellate level, of the decline in the purchasing power of a dollar over time has been recognized in this state for a very long time. *McQuary v. Penketh*, 194 Wash. 57, 76 P.2d 1024, 1026 (1938); *Brammer v. Percival*, 133 Wash. 126, 233 Pac. 311, 313 (1925); *Allison v. Bartelt*, 121 Wash. 418, 209 Pac. 863, 865 (1922); *McCreedy v. Fournier*, 113 Wash. 351, 194 Pac. 398, 401 (1920).

An encyclopedia reports that throughout the nation

> [T]he courts take judicial notice of . . . the value of money, in the past as well as in the present.
>
> . . .
>
> The courts will take judicial notice of the change in value of the dollar over years, and the steady and material decline in the purchasing power of the dollar. Changes in the cost of living are a matter . . . of which the court may take judicial notice . . . . Judicial notice is taken of relevant data in the Department of Labor's Consumer Price Index, as the index is widely accepted as a means of calculating cost of living increases.

(Footnotes omitted.) 29 Am.Jur.2d *Evidence* Sec. 70 (2008).

It has been established in Washington that the courts of this state take judicial notice of the prime rate of interest. *Tyler Pipe Ind., Inc v. Dept. of Revenue*, 96 Wn.2d 785, 796, 638 P.2d 1213 (1982).

Matters which may be judicially noticed include

> stock quotes; general market trends; the maturity rate of United States Treasury Bonds; the consumer price index; . . . a foreign currency rate of exchange; and prevailing interest rates.

(Footnotes omitted .) 29 Am.Jur.2d *Evidence* Sec. 71 (2008).

Especially *apropos* of the financial environment in which prior interest rate legislation was enacted in this state is the principle that

> State courts . . . take notice of historic facts peculiarly connected with or affecting the state, including the historical facts and conditions which preceded and lead to the enactment of legislation on a given subject, ...

(Footnotes omitted.) 29 Am.Jur.2d *Evidence* Sec. 77 (2008).

b. Judgments in Marital Dissolution Cases are the Only Judgments the Court May Order Will Accrue Interest at Other Than the Statutory Rate.

The statute addressing the interest rate on judgments provides for different rates depending on the type of recovery to which the judgment relates: Judgments founded on written contracts, RCW 4.56.110(1); judgments based on unpaid child support, RCW 4.56.110(2); judgments based on tortious conduct of a public agency, RCW 4.56.110(3)(a); judgments based on tortious conduct of other persons, RCW 4.56.110(3)(b); and, finally, judgments entered respecting any other form of judgment obligation, RCW 4.56.110(4), 19.52.020. A judgment

intended to equalize property distributions in a marital dissolution case is inevitably one of the latter, as it so clearly is not any one of the other specifically named types (written contract, unpaid child support, tort).

When a court equalizes property between parties through the entry of a judgment, the judgment becomes the civil procedure "tool" by which the monetary obligation becomes enforceable in the hands of the former spouse in whose favor the judgment is rendered. However, it has been law in this state for at least 65 years since 1950 that the judgment rate of interest may, but need not be, the rate of interest which accrues on the property equalizing judgment. *Berol v. Berol*, 37 Wn.2d 380, 383, 223 P.2d 1055 (1950). The only explanation the undersigned is able to infer for the court's power in a marital dissolution case to set a rate on an equalizing judgment different from the statutory judgment rate is the paramount mandate for property distribution upon dissolution of marriage that the distribution be "just and equitable," which clearly includes both justice and equity as applied to the judgment interest rate as well as to the underlying division of the property itself. RCW 26.09.080. As to judgments arising from causes of action other than dissolution of marriage, no power exists for the court to set a judgment interest rate different from that prescribed by statute. *Safeco Ins. Co. of Am. v. JMG Restaurants, Inc.*, 37 Wn.App. 1, 23, 680 P.2d 409 (1984). The

paramount obligation of the court to act equitably in marital dissolution cases even includes the court's power to decree a rate of interest different from the judgment rate when the judgment arising out of the marital dissolution action is an award of attorney's fees and not for the purpose of equalizing the distribution of property. *In re Marriage of Knight*, 75 Wn.App. 721, 731, 800 P.2d 71 (1994).

The only conclusion can be that the Legislature's mandate in RCW 26.09.080 for a "just and equitable" distribution of property and in RCW 29.09.140 for the power to provide for attorney's fees "reasonable in amount" are both considered by the appellate courts of this state to be of a higher order of judicial obligation than the Legislature's enactment that judgment interest shall be, except in the cases specifically provided to the contrary, twelve percent in each and every case. RCW 4.56.110(4), 19.52.020; *Berol v. Berol, supra*, 37 Wn.2d 380, 383 (1950); *In re Marriage of Knight, supra*, 75 Wn.App. 721, 731 (1994). The judgment process provided by statute and court rule is the tool for enforcement of property equalization in some situations and for attorney's fees, but in marital dissolution cases the rate of interest on a judgment entered for these purposes lies in the discretion of the court. *Berol v. Berol, supra*, 37 Wn.2d 380, 383 (1950); *In re Marriage of Knight, supra*, 75 Wn.App. 721, 731 (1994).

c. Interest at the Judgment Rate of 12% Should Not be the Presumed Requirement in This Case. This Obligation Was a Judgment, Was Protected by a UCC Security Interest, and Was Denominated as One Not Dischargeable in Bankruptcy.

In this case, the court made a decree for installment monetary payments to equalize a property distribution and both decreed a security interest to back up payment and also entered a judgment against the obligor as further assurance of payment. (CP 69.) The court additionally denominated the obligation as one not dischargeable in bankruptcy. (CP 69. See 11 U.S.C. Sec. 523(a)(5), (15).) One might say this particular obligation was, in the ways described, "triple protected" by the court's design.

The Washington Supreme Court has twice addressed appropriate resolution of the question of interest when the obligation is protected by a security interest of some form and a third time when the obligation was purely a general judgment. As will be seen presently, the Supreme Court views very differently equalizing payment obligations protected by security interests versus general judgments.

In *Kosanke v. Kosanke*, 30 Wn.App. 523, 192 P.2d 337 (1948), the court had before it an equalizing obligation which was made a lien on real property awarded to the obligor. Without expanding this discussion to unnecessary length, it may be summarized that the Supreme Court essentially rewrote the entire property distribution outcome on appeal. It then came to the question of an appropriate interest rate on deferred payments which were to extend for ten years:

> So that we will not be reminded of that fact in a petition for rehearing, we state that we are aware that Mr. Kosanke will be having the use of the unpaid balance of Mrs. Kosanke's money and that no provision is made for interest thereon. . . . We of the opinion that interest is uncalled for.

Kosanke v. Kosanke, supra, 30 Wn.App. 523, 529 (1948). The Supreme Court felt the statute providing for interest on judgments was utterly irrelevant to the analysis and decreed no interest and did not so much as mention the statute calling for interest on judgments. The rate of inflation during the year the *Kosanke* decision was rendered was fully 8.1%. (U.S. Dept. of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. All Items, 1967 = 100, 1913 – 2015 (2015), available at www.bls.gov/cpi. (Hereinafter, "CPI – U.S. BLS 2015 Table.") *Caveat*: This is a technical document which is much more readily interpreted through numerous reliable secondary sources such as the table, "Historical Inflation Rates: 1914-2015", available at

www.usinflationcalculator.com/inflation/historical-inflation-rates/.) The judgment interest rate at the time of the Kosanke decision was six percent. (Laws 1899, Ch. 80, Sec. 6.)

Another case to the same effect is *Root v. Root*, 64 Wn.2d 360, 391 P.2d 962 (1964), where the trial court decreed a monetary obligation payable over ten years without interest, protected, however, by security interests in vendor's positions in real estate contracts awarded to one party. The party receiving the elongated monetary obligation appealed, contending that six percent interest (the then-applicable judgment interest rate) should have been awarded to her on the deferred obligation for the payment of money. Exactly as in *Kosanke*, the Supreme Court concluded the judgment interest statute had no bearing whatsoever on the problem and did not so much as refer to it in affirming the judgment. The inflation rate the year the *Root* case was decided was 1.3%. (CPI – U.S. BLS 2015 Table.)

Berol v. Berol, 37 Wn.2d 380, 223 P.2d 1055 (1950), however, is a case in which deferred property-equalizing payments were ordered, but there was no security for the executory obligation outside of the judgment of the court itself. The party receiving the award for the payment of money over time, but without interest, appealed and persuaded the Supreme Court that on the basis of the record before it interest at the then-

applicable judgment rate, six percent, should have been ordered. *Berol v. Berol, supra,* 37 Wn.2d 380, 382 (1950). The Supreme Court said,

> We see no good reason why the husband should have the use of the wife's money . . . without the payment of interest thereon; . . .
>
> [W]hile in a divorce case the trial court may, in a proper exercise of its discretion, reduce the rate of eliminate interest entirely on deferred payments which are part of the adjudication of property rights, there should be some apparent reason for giving one spouse the use, . . . of the money of the other without interest or at less than the statutory rate. We see no such reason in the present case.

The case was thus remanded to the superior court to fix a six percent interest rate on the general judgment awarded in favor of the obligee spouse. The judgment interest rate at the time of the *Berol* decision was six percent. *Berol v Berol, supra,* 37 Wn.2d 380, 382 (1950). The Consumer Price Index that year was 1.3%. (CPI – U.S. BLS 2015 Table.)

Insofar as is known to counsel, the Washington Supreme Court has not rendered a decision respecting the question of interest on deferred property equalization payments in marital dissolution cases in the 51 years since 1964 in *Root v. Root, supra,* 64 Wn.2d 360, 391 P.2d 962 (1964). It would not even slightly be a stretch to say that the law established by the Supreme Court is that there is *no* requirement imposed upon a superior court whatsoever to impose *any* interest on deferred property equalization payments in the event the obligation is backed up by a security interest in

property awarded to the obligor (*Root v. Root, supra,* 64 Wn.2d 360 (1964), and *Kosanke v. Kosanke, supra,* 30 Wn.App. 523 (1948)) but that the court may, *but need not*, impose interest at the judgment interest rate in the event there is no security but merely a general judgment (*Berol v. Berol, supra,* 37 Wn.2d 380 (1950)). For completeness, it probably needs to be added that setting interest on an unsecured obligation constituting a general judgment at the then-six percent judgment interest rate appeared plausible to the Supreme Court in that year in which the rate of inflation was 1.3%.

A large part of the problem respecting the law in this area is that the judgment interest rate was doubled by the Legislature from six to 12% in the 29 years between the last time the Supreme Court took up this question in 1964 in *Root v. Root, supra,* 64 Wn.2d 360, 391 P.2d 962 (1964), and the first time the Court of Appeals took the matter up in 1993 in *In re Marriage of Stenshoel*, 72 Wn.App 800, 866 P.2d 635 (1993). Obviously, this doubling of the judgment rate of interest is not a small consideration. The rate on "ordinary" judgments, which had been six percent for 70 years until 1969, was increased to eight percent in 1969. (Laws 1899 Ch. 80, sec. 6; Laws 1969 Ch. 46, Sec. 1.) The rate was increased from eight to ten percent in 1980. (Laws 1980, Ch. 94, Sec. 5.) Then the rate went from ten to 12% two years later in 1982. (Laws 1982,

Ch. 198, Sec. 1.) The final increase came a year later in 1983, when the rate was changed to the higher of 12% and four percentage points above the 26-week Treasury bond coupon yield. (Laws 1983, Ch. 147, Sec. 1.)

The other problem is that when the Court of Appeals took the matter up three times between *Stenshoel* in 1993 and the final of two other cases nine years later in 2002, the Court of Appeals unfortunately overlooked *Root v. Root, supra*, 64 Wn.2d 360 (1964), and *Kosanke v. Kosanke, supra*, 30 Wn.App. 523 (1948), each of the three times it grappled with the law in this area. *In re Marriage of Davison*, 112 Wn.App. 251, 48 P.3d 358 (2002); *In re Marriage of Harrington*, 85 Wn.App. 613, 935 P.2d 1357 (1997); *In re Marriage of Stenshoel, supra*, 72 Wn.App 800 (1993). In two of the three cases, *Stenshoel* and *Harrington*, there was security for the executory obligations, but in the final one of the three, *Davison*, there was not. The Court of Appeals, apparently unaware of either *Root v. Root, supra*, 64 Wn.2d 360 (1964), or *Kosanke v. Kosanke, supra*, 30 Wn.App. 523 (1948), unfortunately applied the rule in *Berol v. Berol, supra*, 37 Wn.2d 380, 223 P.2d 1055 (1950), for a presumption of judgment rate interest to the two cases in which there was security for the executory obligations, even though the *Berol* case is plainly a case in which there was but a general judgment entirely unprotected by a security interest of any type whatsoever. It has

to be said that the Court of Appeals' decisions in both *Stenshoel* and *Harrington* appear to be in direct conflict with the Supreme Court's decisions in *Root* and *Kosanke* and are the result of the misapplication of the law applicable to executory obligations not protected by security interests (*Berol v. Berol, supra*, 37 Wn.2d 380 (1950)) to two cases (*Stenshoel* and *Harrington*) in which there was security protecting the executory property equalization obligations. The problem is compounded – about doubled, really -- through the increase in the judgment interest rate from six to 12% between the time of the Supreme Court and Court of Appeals cases. Interest at the judgment rate is now twice what it was in 1969, so judgment rate interest is thus twice as severe. (Laws 1899 Ch. 80, sec. 6; Laws 1969 Ch. 46, Sec. 1; Laws 1983, Ch. 147, Sec. 1.)

We all painfully know that the United States experience double-digit inflation in four of the very difficult eight years between 1974 and 1981 and that a fifth year (1975) missed the double-digit level by less than one percent. (CPI – U.S. BLS 2015 Table.) The year 1980 had a rate of inflation of fully 13.5%. (CPI – U.S. BLS 2015 Table.) All three of the years 1979 through 1981 were double-digit inflation years. (CPI – U.S. BLS 2015 Table.) As previously stated, the Legislature increased the judgment rate of interest to 12% effective as of 1982. (Laws 1982, Ch.

198, Sec. 1.) These were memorably difficult financial times for our nation.

But the judgment interest rate remains at 12%, even though after 1990 there has never been another year in which the rate of inflation was above five percent. (CPI – U.S. BLS 2015 Table.) Continuing to misinterpret the 65-year-old rule of *Berol* as imposing a presumption of judgment rate interest on both secured and unsecured property equalization obligations in divorce obviously can have highly pernicious effects, as is illustrated by this case. As stated, *Berol* only involved a general judgment and only involved a judgment interest rate of six percent. Now the judgment interest rate is twice that amount, inflation has dropped to historic lows, and of course not all of the cases which come before a court will be *Berol* cases in which there was but a general judgment and no security.

The Court of Appeals, Division II, has not acted in this area respecting property equalization arrangements and is respectfully requested to do so in such fashion that *stare decisis* respect is accorded to the Supreme Court's decisions in both *Root* and *Kosanke*. That would involve decreeing an outcome in which the holding would be that *no* presumption of a judgment interest rate would apply, since this monetary obligation was secured by a UCC security interest in the business of the

appellant and, further, by the trial court's declaration that this obligation for payment of money is of type not dischargeable in bankruptcy. (CP 69; 11 U.S.C. Sec. 523(a)(5), (15).) This court is also respectfully requested to see that a principle established for a judgment rate interest *in some situations* when that rate was six percent makes much, much less sense when the rate has been doubled to 12%, but then inflation has since declined and, indeed, now reached historic lows.

d. Abuse of Discretion in Setting Rate of Interest in Marital Dissolution Property Distributions.

The issue of what constitutes proper exercise of the court's discretion regarding interest rates on property equalization orders and judgments has been infrequently examined by the appellate courts, leaving — as this case makes clear — sparse basis for the trial courts to determine when a reduced rate of interest is proper and, when it is, what that rate should be. The law on the general principles of abuse of discretion, however, is not so limited and illustrates how the lack of standards for this special category of marital cases led the trial court here to err in applying appropriate discretionary standards.

1. The General Rule

The basic definition of abuse of discretion is nearly universal. The following statement of the rule is helpfully more expansive than most:

> A trial court abuses its discretion if its decision is manifestly unreasonable or [133 Wn.2d 47] based on untenable grounds or untenable reasons. Kovacs, 121 Wash.2d at 801, 854 P.2d 629; Wicklund, 84 Wash.App. at 770 n. 1, 932 P.2d 652.
>
> A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK § 18.5 (2d ed.1993)), review denied, 129 Wash.2d 1003, 914 P.2d 66 (1996).

In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997).

While fairly simple in its statement, the rule as to abuse of discretion is less simple in its application. The case law examining abuse of discretion, however, compels the conclusion that the court below erred in its ruling on the applicable interest rate.

2. It Is Abuse of Discretion When the Effect of a Decree Destroys the Court's Intended Even Distribution of Property

Regardless of the merits of the court's decision on interest in *In re Marriage of Stenshoel, supra*, the court's discussion there of abuse of discretion is instructive. In that case, the court declared — as did the court in the present case — that it was striving to divide the parties' property evenly. In its calculation of child support, however, the *Stenshoel* trial

court included the ordered equalization payments from husband to wife as income to the wife and subtracted them from husband's income. The Court of Appeals said:

> [W]e believe that under the circumstances presented here, considering the payments as income or benefits contravenes the principles behind the community property system. In dividing the property, the trial court attempted to achieve a roughly equal distribution. However, by considering the payments as income to Peggy and deducting them from Paul's income, the trial court substantially reduced the value of Peggy's share of the property, thereby undermining the fairness of the distribution. We believe that it is inequitable to require Peggy to unilaterally exhaust her share of the community business to support the children. Therefore, we conclude that the trial court abused its discretion in considering the property distribution payments as income. The amount of the payments should not be added to Peggy's income or subtracted from Paul's.

In re Marriage of Stenshoel, 72 Wn.App. 800, 812, 866 P.2d 635, 72 Wn.App. 800 (1993). The *Stenshoel* situation is indistinguishable from the one before the court. The trial court here was very clear that it intended to divide the parties' property evenly. But the final decree produces a result that defeats that intent.

Here, the court has created a situation in which, rather than ordering equalization, it has ordered an unending stream of payments from Dr. Mr. to Dr. Ms. The court found that the correct number to equalize the property division was $104,291 after the initial $10,000 payment. That

remaining balance of $104,291 is has not been appealed from by either party and is thus correct for purposes of this appeal. The court found that after Dr. Mr. paid monthly child support and covered his own living expenses. the amount he would be required to pay toward that $104,291 was $1,000 a month. That monthly payment obligation is not challenged by either part in this appellate proceeding and is another verity for purposes of this appeal.

The net result of this, when the court ordered that the balance owing on the equalization payment would bear interest at the rate of 12% per annum, is that Dr. Mr. is making interest-only payments on the balance (in fact, $43 per month less than interest accrued). Those payments may be made faithfully into eternity, and the amount of the principal will never diminish.

Respectfully, that cannot by any stretch of the imagination be deemed an equal division of property. By the terms of the decree, over the next 20 years, 51-year-old Dr. Mr. will have paid out $240,000 — more than double the amount the court deemed he owes — and he will still owe the full principal amount.

This seems the classic situation for application of the rule that judgments in dissolution cases need not bear the statutory rate of interest. The trial court's failure to exercise that discretion and order interest significantly below the judgment interest rate constitutes an abuse of discretion and suggests the appropriateness of reversal.

3. Consideration of Speculative or Irrelevant Material

It is abuse of discretion for a court to consider irrelevant matters in making a discretionary decision:

> In considering the propriety of a contingency adjustment, we have held that the trial court abuses its discretion when it takes irrelevant factors into account. *Boeing Co.*, 108 Wash.2d at 65, 738 P.2d 665; *see also Perry v. Costco Wholesale, Inc.*, 123 Wash.App. 783, 809, 98 P.3d 1264 (2004). Here the trial court considered an improper factor when evaluating the propriety of a contingency adjustment in this case.

Chuong Van Pham v. City of Seattle, Seattle City Light, 159 Wn.2d 527, 543, 151 P.3d 976 (2007). The cited case clearly is not a marital dissolution case. It would be an odd state of affairs, however, if the consideration of an irrelevant factor was abuse of discretion in one type of case but not in another.

Similarly, it is abuse of discretion to ground a necessary finding on speculation. In *Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014), the Supreme Court reversed a trial court's order that the parties' names be redacted from an unlawful detainer action. The parties claimed that their concern about being able to rent housing when they were on record as defendants in an unlawful detainer suit represented an imminent threat to their well-being. The court noted that:

> While one property turned them away without considering their defense or checking their reference, it does not follow that every property will. Importantly, they found housing elsewhere -- apparently on their second attempt -- thus, it is not impossible for them to obtain housing. Pure speculation about the future inability to obtain housing in a desired location is not a serious and imminent threat to a compelling interest.

Hundtofte v. Encarnacion, supra, 181 Wn.2d 1, 10 (2014).

Both of these examples constitute refinements of the general rule that a discretionary decision is "based on untenable grounds if the factual findings are unsupported by the record." *In re Marriage of Littlefield, supra*, 133 Wn.2d 39, 47 (1997).

It is respectfully suggested that *most* of the matters the trial court considered in setting the interest rate in this case run afoul of this rule:

A. 29% Interest Rate.

The trial court noted the fact Dr. Mr. was looking at a 29% interest rate on a personal loan to cover a portion of a lump-sum payment to Dr. Ms. The court observed that, but for the statutory maximum of 12%, perhaps 29% would be the right rate for this judgment. (RP of March 6, 2015 10.)

The rate at which Dr. Mr. can borrow money has nothing to do with the appropriate rate of interest on a property equalization payment. The purpose of interest on judgments is to give the judgment creditor the use value of the money (*see, e.g., Berol, supra,* 37 Wn.2d 380, 382 (1950): "We see no good reason why the husband should have the use of the wife's money . . . without the payment of interest thereon; . . ."), which is quite different from the cost of borrowing it.

Were Dr. Ms. to have the lump sum right now and put it in safe investments, she would be subject to the low interest rates characteristic of the present moment: The 26-Week Treasury bill coupon equivalent rate for the first half of October, 2015 ranged from 0.06% to 0.13%. Savings accounts and certificates of deposit currently return less than 2%. She would not suddenly be transformed into a high-risk, "hard money" retail lender who can demand and at times receive 29%.

The 29% interest rate entered the discussion as an explanation as to why Dr. Mr. had been late on one-half of the ordered $10,000 lump-sum payment. When the court seized upon that number to demonstrate that the statutory rate of 12% was, in fact, quite reasonable, the court considered an irrelevant fact. That is abuse of discretion.

B. Default Risk.

The trial court opined that setting interest at the maximum might reflect the court's belief that Dr. Lackey could possibly be a default risk.

As a first matter, the sole support for that opinion on the court's part was that Dr. Lackey was late with half of the large, initial lump-sum $10,000 payment and had paid an ordered interim $5,000 payment on time but jointly to Dr. Ms. and a former attorney of hers as to a portion covered by the former attorney's attorney fees lien. The court ignored the fact that Dr. Mr. had faithfully paid every single installment of ordered family support, never less than $3,750 per month, prior to trial. The court's pronouncement that Dr. Mr. had suddenly become a default risk is simply not supported by substantial evidence in the record.

As a second matter, there is no law known to counsel supporting the proposition that interest on judgments — marital or otherwise — is a

risk-management tool. The purpose of interest on judgments is to give the judgment creditor the use value of the money represented by the judgment. *Berol v. Berol, supra,* 37 Wn.2d 380, 382 (1950). In the case of most judgments, it is a rough, one-size-fits-all number. In the case of dissolutions, the interest rate is flexible so as to achieve overall justice and equity. RCW 29.09.080.

Finally, realistically, if ever there were a case where the risk of default is low, this is that case. The equalizing payment here is secured by a lien on Dr. Mr.'s business *and* is not dischargeable in bankruptcy. (CP 69; RP 877.) The possibility of default is nil.

Consideration of default risk in setting the interest rate in this case is not supported by the facts, is not relevant, and is abuse of discretion.

C. Potential Appreciation of Value of Business; Potential Future Interest Rate Changes.

Both the trial court's consideration of the potential appreciation in value of the chiropractic business and of potential future changes in the rate of interest are mere speculation without a remotely sufficient basis in the record. The task of the court is to deal with the parties as matters stand at the time of the decree. Consideration of these entirely speculative

factors in setting the interest rate in this case should be held to have been abuse of discretion. *Hundtofte v. Encarnacion, supra*, 181 Wn.2d 1 (2014).

D. The Appropriate Rate.

It is clear from the record that the court below was honestly puzzled about how properly to exercise discretion as to an interest rate in this situation. (RP of March 6, 2015 22, 27.) If this court declines to apply the Supreme Court's zero-interest precedents for secured equalization payments discussed and ordered in *Root v. Root, supra*, 64 Wn.2d 360 (1964), and *Kosanke v. Kosanke, supra*, 30 Wn.App. 523 (1948), then it is submitted it ought to follow, and refine, the outcome in *In re Marriage of Davison, supra*, 112 Wn.App. 251 (2002). The dispute in that case was the propriety of an 8% interest rate on an equalization judgment. The court said:

> In denying Mr. Davison's motion for reconsideration, the court noted that the statutory interest rate was "very high" and current interest rates were approximately 9.25 percent. CP at 41. Assuming this finding is supported by competent evidence, it would be a valid reason for setting the interest rate at 9.25 percent. However, it does not justify setting the rate at 8 percent. By not giving a reason to support this rate, the court abused its discretion. We thus remand the matter for determination of an appropriate interest rate.

In re Marriage of Davison, supra, 112 Wn.App. 251, 259 (2002). The court did not expand on which "current interest rates" were 9.25%. Note, however, that the court explicitly approved a rate lower than the statutory rate and at a number representing some then-current general financial institution benchmarks. In addition, the court did not preclude setting the rate lower than that: It left open the option for the lower court to provide adequate reasons for setting the rate at 8%.

Although the Washington appellate cases do not speak with one voice as to setting lower-than-statutory interest rates on equalizing payments and are frankly lacking in clarification as to the factors the trial court should consider (except in cases in which there is security to protect the obligation (*Root v. Root, supra*, 64 Wn.2d 360 (1964) and *Kosanke v Kosanke, supra*, 30 Wn.App. 523 (1948)), the Legislature has provided at least a potentially useful clue as to what it might deem appropriate. The statute providing for interest on judgments has, after all, long referenced the Treasury bill rate:

> (1) Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market

> auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate.

RCW 19.52.020 (defining the general rate of interest on judgments set forth in RCW 4.56.110(4)). It is just that the Treasury bill rate has long been too low to come into play, leaving the default judgment rate 12%.

There are, however, other parts of the statute setting interest on judgments that suggest possible benchmarks to use in dissolution cases:

> (a) Judgments founded on the tortious conduct of a "public agency" as defined in RCW 42.30.020 shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.
>
> (b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in

> their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

RCW 4.56.110(3). Clearly, the Legislature has declared that, at least in tort cases, the use value of money is tied to either the T-bill rate or the prime rate. It is respectfully suggested that using a similar measure as the baseline in marital dissolution cases would permit the lower courts to have an easily accessible baseline that is reasonably tied to what the average person would be able to get when prudently investing a sum of money.

VI. Conclusion

The trial court observed in rendering its decision that assistance from the appellate level respecting the standards to be applied in setting interest rates in property equalization situations would be appreciated. (RP of March 6, 2015 22, 26.) The court then referenced factors, some based on purely speculative possibilities, which clearly should be held to

be inappropriate, and then said it based its decision on all the factors it had mentioned. (RP of March 6, 2015 27.) Compounding the problem is the fact that the existing Court of Appeals precedents in this area overlook two Supreme Court cases which hold that *any* interest may be inappropriate when there is security for the equalizing monetary obligation. *Root v. Root, supra,* 64 Wn.2d 360 (1964), and *Kosanke v. Kosanke, supra,* 30 Wn.App. 523 (1948). Finally, it makes a real mess of things that the judgment interest rate was doubled during high interest times and remains doubled, while interest rates in the economy have now plunged to historic lows, yet a pernicious line of cases continues to imply that the judgment rate remains the presumptive rate.

These circumstances speak loudly for appellate assistance in clarifying the standards which should be applied in these situations generally and of course to this case in particular. The decision below should be vacated as to the interest rate set by the trial court and the case either remanded to the superior court with clarification as to the appropriate standards to apply in determining a rate, or, alternatively, this court should access its broad powers of judicial notice to set a rate itself and remand the case to the trial court with instructions to order the rate it deems to be just and equitable.

VII. Acknowledgement

The undersigned gratefully acknowledges the able assistance, as law clerk, of the research and writing of this brief of his former law partner E. Douglas Pibel, Jr., WSBA No. 16411: J.D., University of Washington, 1986; member, Washington State Bar Association, 1986 to 2009; presently Managing Editor of *Yes! Magazine*, Bainbridge Island, Washington.

Dated: October 26, 2015.

Respectfully submitted,

JAMES MARSTON
WSBA No. 1283
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

In re the Marriage of GREGORY LACKEY, Appellant, and CAROLYNN LACKEY, Respondent.	**No. 47557-0-II** **Return of Service** (OPTIONAL USE) (RTS)

I declare:

1. I am over the age of 18 years, and I am not a party to this action.

2. I served Carolynn Pavlock (formerly known as Carolynn Lackey), the respondent in this proceeding, with the following documents:

   1. Brief of Appellant
   2. Verbatim Report of Proceedings (copy) (complete) (8 volumes)

3. The date, time, and place of service were as follows (if by mail, refer to Paragraph 4, below):

   Date: October 27, 2015
   Time: 8:25 a.m.
   Address: 17811 N.E. 20th Street, Vancouver, Clark County, Washington

4. Service was made pursuant to Civil Rule 4(d) by delivery to the person named in paragraph 2, above.

5. Service of Notice on Dependent of a Person in Military Service.

   Other: Does not apply.

James Marston, WSBA No. 1283
3508 N.E. Third Avenue
Camas, WA 98607-2411
(360) 335-1515

6. Other.

a. Service was of one copy of each of the documents identified in paragraph 2, above.

b. Service was accomplished by delivery of copies of the specified documents into the hands of the person named in paragraph 2, above, at the specified time and place.

c. I am a United States citizen, a resident of the State of Washington, and competent to be a witness in this action. I have no financial interest in any aspect of the outcome of this case.

d. The attorney at whose request the specified documents were served paid $40.00 for my services in accomplishing service as stated herein.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 27 day of October, 2015, at Camas, Washington.

CLINT RADER
Clark County licensed process server number
4861614

Fees:

Service: $40.00
Mileage: 0.00
Total: $40.00

James Marston, WSBA No. 1283
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